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July 24, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 9, 2006

Case Number: TSO-0365

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should be restored.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor, and was granted a DOE access authorization in 1992. In March 2003, the individual reported to a DOE security specialist that he had been arrested for Driving Under the Influence of Alcohol (DUI). In May 2003, the DOE conducted a Personnel Security Interview with the individual (the 2003 PSI). The individual subsequently reported that he was arrested for Public Intoxication in March 2004. The DOE conducted a second PSI with the individual in December 2004, and the individual was evaluated in September 2005 by a DOE-consultant Psychologist (the DOE-consultant Psychologist), who issued a report containing his conclusions and observations.

In January 2006, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. In this letter, the Manager states that the individual's behavior has raised security concerns under Sections 710.8 (j) and (l) of the regulations governing eligibility for access to classified material. Specifically, with respect to Criterion (j), the Operations Office finds that the DOE-

consultant Psychologist diagnosed the individual as having been a user of alcohol habitually to excess and as meeting the criteria for "Alcohol Disorder, Not Otherwise Specified" (hereinafter Alcohol Disorder) found in the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition (DSM-IV TR)*. The Notification Letter also refers to the following alcohol related incidents involving the individual:

- (1) a March 13, 2004 arrest for Public Intoxication;
- (2) a March 8, 2003 arrest for Driving Under the Influence of Alcohol (DUI); and
- (3) a November 29, 1980 arrest for Public Intoxication.

In addition, the Notification Letter states that information in the possession of the DOE indicates that the individual has reported to his personal psychologist that he over-uses alcohol when he is stressed. It further states that he has admitted at a PSI and in his interview with DOE-consultant Psychologist that he used alcohol in 2003 to self-medicate in order to cope with marital stress, and that he was not in control of his use of alcohol.

With respect to Criterion (1) the Notification Letter finds that at his 2003 PSI, the individual stated that he had stopped drinking after his 2003 DUI and hoped to continue his sobriety. In a PSI conducted after his 2004 arrest for public intoxication, he stated that he was probably lying about his intention to remain abstinent, but then recanted by saying that he was not lying, but had failed to follow through on his intention to maintain abstinence by continuing to consume wine every now and then. Attachment to January 2006 Notification Letter at 1-2.

In February 2006, the individual requested a hearing (hereinafter "the Hearing") to respond to the concerns raised in the Notification Letter. The requested hearing in this matter was convened in June 2006 (hereinafter the "Hearing"). At the Hearing, the individual did not contest the DOE-consultant Psychologist's finding that in 2003 and early 2004 he met the criteria for a diagnosis of Alcohol Disorder. Accordingly, I find that the individual properly was diagnosed with Alcohol Disorder subject to Criterion (j). The testimony at the Hearing focused chiefly on the individual's efforts to mitigate the concerns raised by this

diagnosis through abstinence from alcohol and recovery activities.

II. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b),(c) and (d).

A. *The Individual's Burden of Proof*

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should

err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we generally expect the individual in these cases to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995); *Personnel Security Hearing (Case No. VSO-0038)*, 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

B. Basis for the Hearing Officer's Decision

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

III. HEARING TESTIMONY

At the Hearing, testimony was received from eight persons. The DOE presented the testimony of the DOE-consultant Psychologist. 1/ The individual, who was represented by counsel, testified and presented the testimony of a licensed alcohol and drug abuse

1/ As indicated by the testimony of the DOE-consultant Psychologist (TR at 14-15) and by his curriculum vita (DOE Hearing Exhibit No. 25), he clearly qualifies as an expert witness in the area of alcohol and substance abuse.

counselor (the individual's alcohol counselor), 2/ his family doctor, his daughter's special education teacher, a co-worker, a family friend, and his adult son.

A. The DOE-Consultant Psychologist

The DOE-consultant psychologist testified that in September 2005 he met with the individual for an evaluation and a follow-up session concerning the individual's alcohol problems. He stated that prior to the evaluation, he reviewed the individual's personnel security file that was provided to him by the DOE. He also obtained and reviewed the individual's medical records. He then conducted an extensive interview with the individual, and administered a variety of psychological and laboratory tests. TR at 15-16. He noted that the individual had three alcohol-related legal incidents on his record: a 1980 disorderly conduct/public intoxication charge, a 2003 DUI charge that was later reduced to "Driving While Impaired" 3/ , and a 2004 disorderly conduct charge that was later dismissed. TR at 16.

He stated that the individual reported that he was currently consuming a glass of wine two or three times a week, but admitted that in 2003 and 2004 he had used alcohol to cope with stress and tension related to marital problems. TR at 19. The DOE-consultant Psychologist stated that this admission of alcohol use to cope with marital stress was confirmed by his review of records of the individual's marital counseling in 2004. He also indicated that the individual's doctor had treated him for anxiety and possible depression in 2004. TR at 20. The DOE-consultant Psychologist then discussed some anomalies in the individual's liver enzyme tests. He stated that elevated liver enzymes detected on tests administered in May and September 2005 indicated possible heavy drinking by the individual, while the individual's liver enzyme levels measured on tests taken in 2002, 2003 and 2004 had been within normal limits. TR at 26. He also stated that a follow-up test in September 2005 for a biomarker of liver functioning more specific to alcohol use yielded a normal test result. TR at 28.

2/ As indicated by her testimony (TR at 53-54), the individual's counselor qualifies as an expert witness in the area of treating alcohol disorders.

3/ The individual's counsel explained that the charge of "Driving While Impaired" was a lesser offense than a DUI and did not involve the revocation of the individual's driver's license.

Using the DSM-IV-TR diagnostic guidelines, the DOE-consultant Psychologist found that the individual had suffered in 2003 and 2004 from an adjustment disorder that was essentially in remission at the time of his September 2005 interview. TR at 32.

I think the adjustment disorder with mixed anxiety and depressed mood went a long way to explain his behavior in 2003 and 2004, when he was under such stress, particularly in regard to family matters, and about which he inappropriately coped by using alcohol.

TR at 32.

In evaluating the individual's alcohol disorder, the DOE-consultant Psychologist stated that the individual's 2003 and 2004 legal incidents involving alcohol, his admitted use of alcohol to cope with marital stress, and his elevated biomarkers in May and September 2005 were positive factors indicating a disorder. He stated that these factors were somewhat mitigated by the facts that there was no positive family history of alcohol or substance abuse, no clear evidence of a long history of excessive alcohol use, and that the individual did not appear to be particularly highly vested in drinking during his September 2005 interviews. TR at 33. 4/

Based on his evaluation of these factors, the DOE-consultant Psychologist did not believe that the individual had met the diagnostic criteria for alcohol abuse or dependence.

What I did was diagnose alcohol-related disorder not otherwise specified, which is a category in DSM-IV which one can use to diagnose an alcohol disorder that doesn't quite fit in the other boxes. That's what I felt was appropriate, given all the data and the history of [the individual].

TR at 34.

Based on his diagnosis, the DOE-consultant Psychologist made recommendations in his Report concerning what the individual needed to do to demonstrate rehabilitation and reformation from his Alcohol Disorder. He testified that his recommendations were bifurcated as a result of the individual's ambiguous liver enzyme

4/ The DOE-consultant Psychologist described the individual's 1980 alcohol charge as "perhaps [a] youthful excess and not an indication of a lifetime pattern." TR at 33.

tests. He stated that if the individual's elevated liver enzymes were found to be unrelated to alcohol consumption, the individual could demonstrate rehabilitation and reformation by abstaining from all use of alcohol for six months, continuing in counseling, and by obtaining an independent alcohol specialist evaluation. TR at 193. In the event that the elevated liver enzymes were found to be related to alcohol consumption, he recommended that the individual demonstrate a year of abstinence in addition to following his other recommendations. TR at 193-194. 5/

After listening to the testimony of the individual and his witnesses, the DOE-consultant Psychologist concluded that the individual had demonstrated rehabilitation from his Alcohol Disorder. TR at 195. He stated that the individual's consumption of a glass of wine in December 2005 does not concern him "to a significant extent because it was one drink." TR at 197. He stated that the individual's alcohol counselor

is very good and very effective in dealing with alcohol disorders. She would not put up with monkeying around. She could spot denial if he was demonstrating denial. So I feel confident in her work with him.

TR at 197. He stated that the individual

doesn't appear to have a core severe alcohol disorder, and he does have some very reasonable relapse prevention practices in place, particularly with [his psychologist] and [his alcohol counselor]. I see that as very favorable.

TR at 196. He stated that his understanding of the alcohol counselor's testimony was that while she did not categorically

5/ Following the Hearing, the individual's counsel submitted a letter from a gastroenterologist who examined the individual in June 2006. This doctor reports that the individual "had been having some episodic elevation of his liver blood tests, which has now been confirmed to unequivocally be related to common bile duct stones which we removed from his common bile duct last week." June 30, 2006 letter of the individual's gastroenterologist. Based on this information, I find that the individual has resolved the concerns raised by his elevated liver enzyme tests, and that the DOE-consultant Psychologist's recommendation of six months of abstinence from alcohol is the appropriate recommendation for the individual.

forbid the individual to drink as a professional recommendation, she would prefer that he not drink at all. TR at 199. He also stated that while he "would not officially promulgate the requirement that [the individual] abstain from all consumption of alcohol in the future, he cautioned the individual that "there are a variety of reasons why tempting fate with any consumption of alcohol is probably not the best idea." TR at 195. He concluded that the individual has demonstrated that he is rehabilitated from his diagnosis of Alcohol Disorder, and that he does not have a mental condition that would interfere with his judgment. *Id.* While he expressed some concern that issues with the individual's estranged wife would continue to present emotional challenges to the individual, the individual now had a support system that would allow him to deal with those issues in an appropriate way. "With those things in place, I think he's got a good prognosis." TR at 197.

Finally, the DOE-consultant Psychologist stated that the individual should not be viewed as dishonest because of the statement made at his 2004 PSI that he was "probably lying" when he expressed an intention to the DOE in 2003 to abstain from alcohol consumption.

I don't read that as an honesty issue. I would see it as more of a kind of impulsive response of his during the interview. . . . In my knowledge of [the individual], and my work with him and hearing testimony here today, I don't have any significant concern about his honesty or his integrity.

TR at 202.

B. The Individual's Alcohol Counselor

The individual's alcohol counselor testified that the individual first consulted her in November 2005 based on the recommendation made by the DOE-consultant Psychologist. She stated that they have had a total of thirteen sessions together, and that she has both evaluated the individual's alcohol use and counseled him on life issues. TR at 54-55. She stated that she did not believe that the individual suffered from alcohol abuse or dependence, that he in fact has a relatively low tolerance for alcohol that has not increased over time, which is very different than someone who is chemically dependent. TR at 56.

I believe that while alcohol is something that he used in moderation through his life, that during this time of

intense stress, it didn't allow him to use the kind of good judgment that I believe he is able to do now.

TR at 57. She stated that the major stressor for the individual over the last few years was his wife's descent into mental illness and her inability to care for their adopted "special needs" child. TR at 58-59.

She concluded that

I don't see him as somebody that has an ongoing alcohol disorder, but I believe he is now aware that it's just key that he be totally sober when he's in any situation involving his wife or where he needs to use his best judgment.

TR at 63. She stated that she did not see a problem in the individual's future use of alcohol "as long as he is not with his mentally ill wife and in a situation of that intensity." TR at 75.

C. The Individual's Family Doctor

The individual's family doctor testified that he has been the individual's primary care physician since March 2004. He stated that at the individual's request, he tested the individual's liver enzymes in late September 2005, November 2005, and December 2005, and that all three tests were completely normal. TR at 86. He stated that his examinations of the individual have revealed nothing that would lead him to believe that the individual has a problem with alcohol consumption. TR at 87. He confirmed that the individual's wife was having emotional issues that certainly affected the individual's marriage to his wife. TR at 88. He stated that the individual indicated that he was under stress, and that he prescribed an antidepressant that he could use on an as-needed basis for anxiety. TR at 88. He also confirmed that the individual's adopted daughter had special needs that would make her "a very difficult child to raise, to be a parent to." He also observed that

They seemed to have a very good relationship, and I think he has performed very excellently as a parent, and primarily as a single parent.

TR at 89. The individual's family doctor stated that the individual had told him in 2004 that occasionally he consumed alcohol in response to his wife's emotional outbursts. TR at 95.

He testified that he believed that the individual told him around September 2005 that he had quit consuming alcohol. TR at 96.

D. The Individual

The individual testified that he has worked in government positions for most of his career and has had a security clearance since 1979. He has worked for DOE contractors since 1992, and also is participating in the DOE Human Reliability Program (HRP), which provides for yearly psychological and physical examinations. TR at 132. He stated that through the HRP, he has been subject since 2003 to random alcohol testing, and that he has never failed any of these tests. TR at 133.

The individual stated that he and his wife separated in October 2005, and that she now resides in another city. TR at 137. He expects their divorce to be final in three or four months. TR at 167. He states that he currently lives with his son, who is home from college for the summer, and with his youngest daughter, who is under ten years of age and who has been diagnosed as having special needs. TR at 136-137. He states that beginning in about 2001, his wife developed a mental illness that involved anger and mood swings, and forced him to do the housework, cooking and provide the major care for his youngest daughter. TR at 137.

The individual testified that he has never been a heavy drinker. In college, he would drink at parties but that he "never had much vested interest in drinking on a daily basis or anything like that." TR at 147. He stated that in recent years, he would drink

one to two glasses of wine at a time, probably once or twice a week, mostly on a Friday night, or maybe a Saturday. But that's about it. Watching the basketball game or a soccer game on TV.

TR at 148. He stated that the 1980 arrest for public intoxication occurred when he got into an argument with a military security guard who asked to see his badge or driver's license to get through a security gate.

I said, "I don't have to. My sticker is on my car. I should be allowed through." We argued for a couple of minutes. He asked me to step out of the car. I stepped out of the car. . . . He called his supervisor up. And then after he got off the phone, he told me that I was under arrest and just to stay there, and he allowed me to stay in the guard shack, and police came and arrested me.

I think the true charge is disorderly conduct for failing to obey a security guard's order. . . . I don't believe it was public [intoxication], I believe it was disorderly conduct, and I believe I pled no contest.

TR at 170-171.

The individual stated that his March 2003 arrest occurred when his wife became agitated and told him to leave the house. He stated that he had not cooked any dinner, so he picked up a box dinner at a supermarket and purchased a bottle of wine. He parked in a public parking space at a park about half a mile from his home, ate the dinner, and consumed half of the bottle of wine (approximately three glasses) while seated in his car. He then went to sleep in his car. He was awakened by the police knocking on the door of his car. Because there was an open bottle of wine in the car and he was in possession of his car keys, he was charged with DUI. TR at 139-140.

With regard to his statement at his 2003 PSI that he intended to maintain sobriety, he testified that for a lengthy time after the 2003 PSI he did not consume any alcohol. Eventually, he convinced himself that he could drink moderately and still "handle the situation with my wife." TR at 162.

The individual stated that his March 2004 arrest took place at his home on a weekend evening after dinner. He testified that he had consumed one or two glasses of wine and that his wife had been drinking a lot.

We got into a fight - an argument, yelling, and she called 911. But by the time the police got there, we were both calmed down, and we were standing in the front yard, waiting for the police to arrive. . . . They separated us, and I heard my wife say, "I want him out of the house." And the police asked me, "we want you to leave the house." And I said, "Why should I leave the house? This is my house, too." I had [my daughter] in the house. And the police officer asked me, "Have you been drinking any?" I said, "I've had one or two glasses of wine." He said, "You're drunk in public," in my front lawn, and took me to jail.

TR at 141-142. The individual stated that he bailed himself out on Monday morning and personally spoke to the prosecutor about what happened. He testified that the case was then dismissed. TR at 142. He stated that he immediately scheduled sessions with a

marriage counselor because his marriage situation had become unlivable.

[My wife] went a time or two, but in her condition, she said it wasn't helping, it wasn't doing her any good. So I continued to go, and I learned techniques on how to diffuse the situation with my wife, such as leaving the house, going to the bookstore, going to the library, or just getting out of the house with [my daughter]. . . . I learned not to argue with [my wife], not to be around her when she was in an agitated state, because she could turn on you in a minute.

TR at 143.

The individual testified that when he was advised by the DOE-consultant Psychologist in September 2005 not to drink, he followed that advice and has not consumed any alcohol for the past ten months, with one exception. He stated that he had a single glass of wine to relax after he drove 500 miles to a family gathering in December 2005. TR at 155.

With regard to his future intentions with alcohol, the individual testified that

I'll do whatever the medical profession says for me that I ought to follow in my regimen. I know [my family doctor] has said that he can't find any issues with me. He knows my wife, he knows the situation I was in. He has not told me not to drink anymore. But I would follow any medical advice, which I did when [the DOE-consultant Psychologist] immediately tried to remedy the situation.

TR at 149. The individual acknowledged that he had been advised by his alcohol counselor not to drink when he is involved in a stressful situation, and that he believes that he can recognize emotional situations in which he should not drink. TR at 150. He stated that he has no intention ever to drink to the point of intoxication, but that if his doctor permits him to drink, then he will have an occasional glass of wine. TR at 172-173.

E. The Individual's Daughter's Special Education Teacher

The Special Education Teacher who instructs the individual's daughter testified that his daughter is developmentally delayed, has very limited verbal skills, and a multitude of special needs. TR at 107. She stated that since October 2005, the individual has

functioned well as a single parent in raising his daughter. TR at 110. She stated that she has never observed the individual exhibit any sign of alcohol use during their interactions at the school, and that she never has visited the individual's home. TR at 111-113.

F. The Individual's Co-worker

The individual's co-worker testified that when the individual was hired at the DOE facility about five years ago, he took over the co-worker's old position and moved into his former office. He stated that at times they have worked closely together. TR at 117. He stated that the individual is a good employee, insightful, works hard, and is dedicated and conscientious. TR at 117. He stated that the individual has exhibited good judgment, reliability and honesty, and that he is emotionally steady in the workplace. He testified that he has never observed the individual to have any problem with alcohol. TR at 118. He stated that he does not monitor the individual's attendance, but has always been able to locate the individual at the workplace when he needed to find him. TR at 119.

The co-worker stated that he has never socialized with the individual outside of the workplace except for company parties and picnics, and he has never observed the individual having a problem with alcohol on those occasions, and could not recall if he ever observed the individual consume any alcoholic beverage. TR at 119.

G. The Individual's Family Friend

The individual's family friend testified that he was a professional soccer coach and that he met the individual through coaching the individual's son for two years beginning in 2002. He stated that the he saw the individual three days a week during soccer season because the individual enjoyed attending soccer practice with other parents. Since 2004, he frequently sees the individual with his daughter using the play area adjacent to the soccer practice field. TR at 41-42. He also had frequent telephone conversations with the individual discussing his son's progress in soccer. TR at 43. He stated that he had never observed anything to indicate that the individual was drinking alcohol or was under the influence of alcohol. TR at 40.

The family friend also stated that the individual recently invited him to his home to watch a World Cup soccer match. He stated that the individual made some dinner and offered him a beer. TR at 46. Initially, he stated that he thought that the individual also had

a beer, but then he stated that the individual drank from a plastic cup and that he really had no idea what he was drinking. TR at 47-49. 6/

H. *The Individual's Adult Son*

The individual's son testified that he is a college student who lived at home with the individual until the summer of 2005, has visited the family home during his vacations, and is now living at home during his summer vacation. TR at 183. He stated that his mother has severe problems and drank more than she should. TR at 184-185. He stated that he hasn't seen his father drink

In a long time, since I've been home. Last summer, he didn't drink at all really. I didn't see him drink once.

TR at 185. He said that he could not remember the last time he saw his father drink, but that it was probably a year ago. TR at 187. He stated that his father was always a moderate drinker.

He takes it in moderation, not a lot. Probably one glass of wine, maybe, one beer maybe.

Id. He stated that he considers his father emotionally stable and trusts his judgment. He also testified that during a Christmas visit with his mother, she dialed 911 to have him arrested because he felt that she was too drunk to drive and hid her car keys. TR at 189.

IV. ANALYSIS

The individual believes that he has demonstrated rehabilitation from his diagnosis of Alcohol Disorder by following the advice of the DOE-consultant Psychologist and, with a single lapse, abstaining from alcohol since September 2005. In addition, he asserts that his ongoing work with his alcohol counselor to learn to avoid using alcohol in stressful situations and to acquire alternative skills to cope with stressful life situations has greatly reduced the possibility that alcohol-related security concerns will arise in the future. Finally, he believes that his explanation concerning his resumption of drinking after his 2003

6/ The individual later testified that he offered the family friend a beer that he had purchased especially for that occasion, but that he did not consume any alcohol with his friend. TR at 155-156.

PSI mitigates the concern that he lied about his future intentions to the DOE. For the reasons stated below, I conclude that the individual's arguments and supporting evidence mitigate the Criterion (j) and (l) security concerns identified in the Notification Letter.

The testimony at the Hearing indicated that the individual has been abstinent from alcohol since September 2005, with the single exception of a glass of wine that he consumed in December 2005. The individual promptly reported this lapse to his alcohol counselor and both the alcohol counselor and the DOE-consultant Psychologist testified that they consider this incident to be a minor lapse in the individual's sobriety rather than an alcoholic relapse. I therefore find that the individual has been abstinent from alcohol for at least nine months.

In their testimony at the Hearing, both the DOE-consultant Psychologist and the individual's alcohol counselor agreed that the individual's sobriety and counseling activities constitute rehabilitation from his diagnosis of Alcohol Disorder for purposes of Part 710. In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual with alcohol problems has exhibited rehabilitation or reformation. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation and reformation from alcohol diagnoses, but instead makes a case-by-case determination based on the available evidence. In making this determination, Hearing Officers properly give a great deal of deference to the expert opinions of psychologists and other mental health professionals. See, e.g., *Personnel Security Hearing (Case No. VSO-0027)*, 25 DOE ¶ 82,764 (1995) (finding of rehabilitation); *Personnel Security Hearing (Case No. VSO-0015)*, 25 DOE ¶ 82,760 (1995) (finding of no rehabilitation).

The DOE-consultant Psychologist asserted that in his opinion the individual does not have a "core severe alcohol disorder" and that the evidence at the hearing concerning the individual's "very reasonable relapse prevention practices" was very favorable. He concluded that the individual is now rehabilitated and that he has a good prognosis for avoiding future alcohol-related security concerns because he has a support system that will permit him to deal with stressful situations in an appropriate way. The DOE-consultant Psychologist also stated that he would not impose a requirement on the individual that he refrain from consuming any alcohol in the future. The individual's alcohol counselor essentially concurred in these conclusions and recommendations.

I agree with the findings of the DOE-consultant Psychologist and the individual's alcohol counselor. As noted above, my positive assessment of the individual's demeanor and of the evidence presented at the Hearing convince me that the individual has maintained his sobriety since September 2005, and that he has committed himself to avoiding alcohol-related problems in the future through his work with his alcohol counselor. The individual's testimony convinces me that he has learned the importance of avoiding alcohol when dealing with stressful situations and can implement stress management techniques that will greatly reduce the risk of future alcohol-related legal incidents. These positive developments are significant factors which indicate rehabilitation and reformation from his Alcohol Disorder. They convince me that the DOE-consultant Psychologist and the individual's alcohol counselor are correct in concluding that the individual is rehabilitated from his Alcohol Disorder and that his future risk of being involved in alcohol-related problems is not unacceptably high for someone holding an access authorization. 7/

Finally, with regard to the Criterion (1) concern, I find that the individual did not intentionally lie to the DOE at his PSI in 2003 when he stated that he intended to refrain from alcohol consumption in the future. The DOE-consultant Psychologist noted in his testimony that he had no significant concerns about the individual's honesty and integrity. I accept the individual's explanation that he was sincere about the declaration of sobriety that he made at his 2003 PSI, and later convinced himself that he would not raise a security concern if he resumed consuming alcohol at a moderate level.

7/ I believe that this finding is in accordance with the recently issued revision of the "Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968", that were originally published as an appendix to Subpart A of the Part 710 regulations at 66 Fed. Reg. 47061 (September 11, 2001). The revised Adjudicative Guidelines provide that security concerns raised by an individual's excessive alcohol consumption can be mitigated the individual's successful outpatient counseling and by the individual demonstrating a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. See Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, <http://www.archives.gov/isoo/pdf/hadley-adjudicative-guidelines.pdf> (December 29, 2005).

Accordingly, I conclude that it now is appropriate to restore the individual's access authorization.

V. CONCLUSION

For the reasons set forth above, I find that the individual suffered from an Alcohol Disorder subject to Criterion (j). Further, I find that this derogatory information under Criteria (j) has been mitigated by sufficient evidence of rehabilitation and reformation. I also find that the individual has mitigated the Criterion (1) security concern. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual's access authorization should be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: July 24, 2006